

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

BUILDING CODE APPEALS BOARD
DOCKET NO.: 11-1001

Jean King,
Appellant

v.

City of Quincy,
Appellees

BOARD'S RULING ON APPEAL

Introduction

This matter came before the State Building Code Appeals Board ("Board") on appellant's appeal filed pursuant to G.L. c.143, §100 and 780 CMR 122.1. In accordance with 780 CMR 122.3 Appellant petitioned the Board to grant a variance from Section 1009 of the Eighth Edition of the Massachusetts State Building Code ("Code") requiring a minimum stairway width of 36 inches. For the following reasons, the Board grants Appellant a variance from 780 CMR 1009.

Procedural History

The Board convened a public hearing on May 17, 2011, in accordance with G.L. c. 30A, §§10 & 11; G.L. c. 143, §100; 801 CMR 1.02; and 780 CMR 122.3. All interested parties were provided an opportunity to testify and present evidence to the Board. Jeanne King appeared on behalf of the appellant. Kathleen Nugent, Local Building Inspector in the Quincy Inspectional Services Department, appeared on behalf of the appellee. All witnesses were duly sworn.

Findings of Fact

The Board bases the following findings upon the testimony presented at the hearing. There is substantial evidence to support the following findings:

1. The property at issue is located at 95 Monroe Road, Quincy, MA.
2. Appellant installed new construction of a 32-inch staircase between the second and third stories of the smallest apartment of her property to create a townhouse.
3. The staircase solved the problem of access to utilities.
4. Appellant applied for a building permit to do the work, but was denied on the grounds that the staircase was too narrow and because it was a structural change.
5. The property contains hard-wired smoke detection and carbon monoxide detection with smoke detectors in the bedrooms.
6. The staircase is a straight run down and will have a platform at the bottom.
7. If the staircase width were to comply with the Code, the staircase would be dangerously close to a window.
8. The City of Quincy has no issues with the variance request.

Discussion

A. Jurisdiction of the Board

There is no question that the Board has jurisdiction to hear this case. The governing statute provides that:

Whoever is aggrieved by an interpretation, order, requirement, direction or failure to act by any state or local agency or any person or state or local agency charged with the administration or enforcement of the state building code or any of its rules and regulations, except any specialized codes as described in section ninety-six, may within forty-five days after the service of notice thereof appeal from such interpretation, order, requirement, direction, or failure to act to the appeals board. G.L. c.143, §100.

The issues giving rise to this matter directly implicate provisions of the Code. As such, this Board has jurisdiction to decide this case pursuant to G.L. c. 143, §100.

B. State Building Code requirements

The issue in this case is whether the Board shall grant Appellant a variance from the Code's requirement that a stairway have a minimum width of 36 inches. Section 1009 of 780 CMR provides that "[s]tairways serving an occupant load of 50 or less shall have a width of not less than 36 inches." Space constraints prevent the stairway from complying with the Code by four inches. If the staircase were to comply, it would be dangerously close to a window. The hardship of space constraints along with the straight shot design of the staircase and the platform at the bottom suggest that a variance from the Code is appropriate.

Conclusion

Brian Gale motioned to **grant** a variance from 780 CMR 1009 requiring a 36-inch staircase due to the straight shot design of the stairway and the platform at the bottom. Jake Nunnemacher seconded his motion. The motion passed unanimously. Appellant's request for variance is hereby granted.

Jacob Nunnemacher

Doug Semple

Brian Gale

Any person aggrieved by a decision of the State Building Code Appeals Board may appeal to Superior Court in accordance with G.L. c.30A, §14 within 30 days of receipt of this decision.

DATED: June 16, 2011